

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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ERIC JOHN DUARTE,

Plaintiff,

v.

CITY OF BOSTON,

MAYOR MICHELLE WU,

BOSTON POLICE CHIEF MICHAEL

COX, BRIGHTON POLICE OFFICER

JOHN DOE, STEWARDS ST.

ELIZABETH NURSE JANE DOE, and

ST. ELIZABETH STEWARD MEDICAL  
CENTER,

Defendants.

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Civil Action No.  
23-12159-NMG

ORDER

GORTON, D.J.

1. Plaintiff Eric John Duarte's ("Duarte") motion for leave to file an Amended Complaint is construed as a response to the Court's March 11, 2024 Order. Duarte's proposed amended complaint, ECF No. 20-1, is subject to screening under 28 U.S.C. § 1915(e)(2) because he is proceeding in forma pauperis. Section 1915 authorizes the federal courts to dismiss an action in which a plaintiff seeks to proceed without prepayment of the filing fee if, among other things, the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against an immune party. See

28 U.S.C. § 1915(e)(2)(B). In conducting this review, the Court construes Duarte's proposed Amended Complaint "with some liberality" because he is proceeding pro se. Instituto de Educacion Universal Corp. v. U.S. Dept. of Educ., 209 F.3d 18, 23 (1st Cir. 2000) (citing Hughes v. Rowe, 449 U.S. 5, 9 (1980) (per curiam); Haines v. Kerner, 404 U.S. 519, 520 (1972) (per curiam)).

2. The Court upon screening will issue summonses only as to the following defendants from the Amended Complaint: (1) City of Boston, (2) Mayor Michelle Wu, (3) Boston Police Chief Michael Cox, (4) Brighton Police Officer John Doe, (5) Stewards St. Elizabeth Nurse Jane Doe, and (6) St. Elizabeth Steward Medical Center. The Commonwealth of Massachusetts is only identified in the caption, and is entitled to Eleventh Amendment Sovereign Immunity; it is dismissed. The Boston Police Department and Brighton Police Departments are not independently suable entities. They are dismissed and the City of Boston is substituted. See Geigel v. Boston Police Dept., No. 22-CV-11437-DJC, 2024 WL 68387, at \*1 n. 1 (D. Mass. Jan. 5, 2024). Furthermore, there is no Brighton Police Chief, as Brighton is a neighborhood covered by the Boston Police. See <https://police.boston.gov/districts/> (last visited April 24, 2024). The Clerk is directed to modify the docket to reflect the defendants.

3. The Clerk shall issue summonses only as to the above identified defendants except Brighton Police Officer John Doe, and Stewards St. Elizabeth Nurse Jane Doe.<sup>1</sup> Because Duarte is proceeding in forma pauperis, he may elect to have service completed by the United States Marshals Service ("USMS"). If Duarte chooses to have service completed by the USMS, he shall provide the USMS with all papers for service and a completed USM-285 form for each person to be served. The USMS shall complete service as directed by Duarte with all costs of service to be advanced by the United States. Notwithstanding this Order to the USMS, it remains Duarte's responsibility to provide the USMS with all necessary paperwork and service information.


4. Notwithstanding Fed. R. Civ. P. 4(m) and Local Rule 4.1, Duarte shall have 90 days from the date of this Order to complete service. Failure to complete service within 90 days may result in dismissal of the action without further notice

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<sup>1</sup> Summonses will not issue against any of the Doe defendants because "John Doe" and "Jane Doe" are fictitious names. Although the use of fictitious names to identify defendants is not favored, situations may arise where the identity of an alleged defendant cannot be known prior to the filing of a complaint. See Martínez-Rivera v. Ramos, 498 F.3d 3, 8 (1st Cir. 2007). If, through discovery, Duarte discovers the true names of the "Doe" defendants, he "should act promptly to seek leave to amend the complaint to substitute the correct parties and to dismiss any baseless claims." Id. at 8 n.5.

from the Court. See Fed. R. Civ. P. 4(m); Local Rule 4.1 (D. Mass.).

So Ordered.

  
NATHANIEL M. GORTON  
United States District Judge

Dated: April 25, 2024